

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

MICHAEL J. LINDELL and
MYPILLOW, INC.,

Plaintiffs,

v.

UNITED STATES OF AMERICA, et al.,

Defendants.

Case No. 22-cv-02290-ECT-ECW

**REPLY MEMORANDUM IN
SUPPORT OF MOTION TO
EXPEDITE HEARING**

Plaintiffs' Motion to expedite the hearing of their motion to obtain access to the Warrant affidavit rests on the bright-line law in this District that "a person whose property has been seized pursuant to a search warrant has a right under the warrant clause of the Fourth Amendment to inspect and copy the affidavit upon which the warrant was issued," because permitting the affidavit to remain sealed effectively deprives the person of the right to challenge the warrant. *In re Up N. Plastics*, 940 F. Supp. 229, 232 (D. Minn. 1996); *see Mem. in Supp. of Mot.*, Doc. 38. In opposition to expediting, Defendants assert, "Plaintiffs are not entitled to access the search warrant affidavit unless and until a criminal prosecution of one or more Plaintiffs occurs," but ignore *Up N. Plastics*, which is directly contrary to their assertion and the leading authority in this District (and consistent with the prior decision *In re Search Warrant for Secretarial Area Outside Office of Gunn*, 855 F.2d 569 (8th Cir. 1988), which *Up N. Plastics* analyzes, 940 F. Supp. at 231-32). *Up N. Plastics* also explains that boilerplate purported need for secrecy in criminal investigations is not sufficient reason to keep a warrant affidavit sealed against the target of the seizure, because

these are “conclusory allegations which would require the sealing of search warrants in nearly every criminal investigation.” 940 F. Supp. at 234. Defendants offer no substantive reason to avoid ruling on Plaintiffs’ motion to review the affidavit prior to the October 19, 2022, hearing.

Nor is there a time-based reason to postpone ruling on Plaintiffs’ motion, and Plaintiffs’ request does not create a fire drill. The motion, filed on October 4, is non-dispositive. Under the regular rules, Defendants must file their response within seven days, by October 11. Dist. Minn. Local R. 7.1(b)(2). Plaintiffs will agree to reply by October 13 (or earlier, if the Court prefers), leaving time to decide the issue¹ before the October 19 hearing without any adjustment of Defendants’ briefing time. The only alteration to the normal rules of briefing schedule affects Plaintiffs. To the extent there is any compression of time to handle the motion, that burden falls on the Court, not on Defendants. If the Court is willing and able to resolve the motion in advance of October 19, no prejudice would accrue to Defendants from expediting the motion.²

¹ Plaintiffs’ Memorandum of Law is only 8.5 pages long, Doc. 38, and there is case law directly on point, *Up N. Plastics*.

² This issue and a related consolidation issue were raised by the Government with Judge Tostrud’s chambers. To the extent Judge Tostrud considers the Government’s request, Plaintiffs submitted a short response. Both communications are attached. *See* Decl. of Andrew D. Parker ¶ 2 & Ex. 1.

Dated: October 6, 2022

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